



Overview of NOAA's Process for Regulating Fishing in National Marine Sanctuaries

Background

NOAA has two statutory authorities, the National Marine Sanctuaries Act (NMSA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) that can be used to regulate fishing activities. NOAA considers both the NMSA and the MSA as tools that can be used exclusively or in conjunction to meet the goals and objectives of national marine sanctuaries. Each sanctuary is unique, and the regulatory options are evaluated by NOAA on a case by case basis to determine which mechanism is most appropriate to meet the stated goals and objectives of a sanctuary.

Past NOAA actions concerning the promulgation of fishing regulations in national marine sanctuaries have highlighted the need for enhanced coordination and collaboration, as well as a clarification of these processes for external stakeholders. In an effort to better communicate NOAA's decision-making processes and improve coordination, NOAA has produced internal operational guidelines that clearly explain the process for deciding under what authority fishing regulations within sanctuaries will be effectuated. The guidelines also describe the roles that Fishery Management councils, federally recognized Indian Tribes, state and federal agencies, sanctuary advisory councils, sanctuary users, and other interested parties play in this process.

The following is intended to provide a general overview of the guidelines. For complete details, please consult the full guidelines document, *NOAA's Regulation of Fishing in National Marine Sanctuaries*.

Regulation of Fishing in Sanctuaries: Process Overview

Identification of proposed fishing management action

Under the NMSA regulatory process, including the mandated review of each sanctuary management plan and regulations, the National Marine Sanctuary Program, engages internal-NOAA and external partners to gather data and review information on an ongoing basis with regard to the resource goals and objectives of sanctuaries. From this data collection and review the need for conservation and management action(s) may be identified.

Based upon an identified need(s) for a conservation and management action, a scoping/information collection process pursuant to the National Environmental Policy Act (NEPA) is undertaken, which includes community outreach, public meetings and a literature review. Subsequent to scoping, an extensive process to prioritize issues and develop potential management actions ensues. This process involves significant government and agency consultations, including Federally Recognized Indian Tribes and regional fishery management councils (RFMC), as well as stakeholder input via sanctuary advisory councils. NOAA produces an agency statement of proposed regulatory actions, which in some instances includes fishing actions.

Development of fishing regulations

With respect to proposed fishing regulatory actions in a sanctuary, §304(a)(5) of the NMSA requires that the appropriate RFMC(s) be given the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone of sanctuary's boundaries. When such regulations appear desirable, NOAA

reviews, approves, and delivers to the appropriate RFMC(s) a package of materials intended to help the RFMC make a determination of what would best fulfill the sanctuary goals and objectives. The RFMC(s) may take any of three actions: prepare draft NMSA recommendations, determine that NMSA regulations are not necessary (e.g., that sanctuary goals and objectives could be fulfilled by the MSA or that no action be taken), or decline to make a determination with respect to the need for recommendations.

Subsequent to the RFMC's recommendation, NMSP, National Marine Fisheries Service, and General Counsel conduct a thorough internal analysis of the proposed action. NOAA then issues a decision on whether or not the submission would fulfill sanctuary goals and objectives. This decision concludes the §304(a)(5) process.

If NOAA determines that draft NMSA regulations prepared by the RFMC(s) fulfill the sanctuary goals and objectives and the purposes and policies of the NMSA, the regulations will be issued as proposed regulations for public comment.

If the RFMC(s) determines that sanctuary goals and objectives should be fulfilled by the MSA, and NOAA accepts that recommendation, no NMSA regulations are proposed and regulations are pursued through the MSA regulatory process.

Finally, if NOAA determines that the RFMC(s) submission does not fulfill the goals and objectives of the sanctuary and the purposes and policies of the NMSA, then NOAA will prepare proposed fishing regulations for the sanctuary. NOAA will communicate the decision to the RFMC(s) and coordinate as appropriate with the RFMC on the development of the fishing regulations.

Finalizing fishing regulations for sanctuaries

If the NOAA analysis of fishing actions determines the appropriate course of action is to pursue the proposed action fully or partially under the NMSA, then the appropriate regulations are prepared by the NMSP, including any necessary change to the respective sanctuary designation document. The specific NMSA process can be found in the guidelines document.

If the NOAA analysis of fishing actions determines the appropriate course of action is to pursue the proposed action fully or partially under the MSA, then the appropriate regulations are pursued under the MSA process. The specific MSA process can be found in the guidelines document.

Guidelines: Improving Coordination and Collaboration

NOAA has been operating pursuant to these procedures for some time, and as such these guidelines do not represent a change in the overall process. However, in developing and implementing portions of this document, NOAA has increased early dialogue among NOAA's National Marine Sanctuary Program, Sanctuary Advisory Councils, NOAA's National Marine Fisheries Service and Regional Fishery Management Councils to enhance coordination of the process.

Consulting earlier and more often with all parties that have an interest in the regulation of fishing in national marine sanctuaries will lead to quicker implementation of regulations when and where they are deemed necessary.

The full guidelines document, *NOAA's Regulation of Fishing in National Marine Sanctuaries*, can be downloaded from <http://www.sanctuaries.noaa.gov/library/alldocs.html#policy>.